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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------------|------------------------|
| 10/768,629 | 01/29/2004 | Karla Weaver | 10123/00901 | 6763 |
| 7590 Patrick J. Fay, Esq. FAY KAPLUN & MARCIN, LLP Suite 702 150 Broadway New York, NY 10038 | | | EXAMINER SCHMIDT, EMILY LOUISE | |
| | | | ART UNIT 3767 | PAPER NUMBER |
| | | | MAIL DATE 06/16/2009 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/768,629

Applicant(s)

WEAVER ET AL.

Examiner

Emily Schmidt

Art Unit

3767

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-6.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Kevin C. Simmons/
Supervisory Patent Examiner, Art Unit 3767

/Emily Schmidt/
Examiner, Art Unit 3767

Continuation of 3. NOTE: The proposed amendments to the claims would be sufficient to overcome the objections to claim 2 and further rejections under 35 U.S.C. 112 second paragraph regarding language previously found in the claims reciting "...the thickness of the seating portion is greater than a thickness of the lumen occluding portion..." However, these amendments significantly change the scope of the claims and would require new grounds of rejection. Therefore, they have not been entered.

The rejections under 35 U.S.C. 112 regarding the recitation of the minority portion are maintained. The drawings and disclosure do not sufficiently encompass the recitation that the seating portion covers a minority of a surface area of the lumen occluding portion. Though the specification discloses the seating portion to be at the periphery there is no supporting disclosure as to the size or span of the area of the periphery. Lacking further definition the periphery of a device could encompass the majority or minority of a surface area. Further the Examiner maintains the rejections in view of Moorehead and Ohringer. Moorehead teaches varying the length of the slit and aperture to determine the pressure differentials which cause the slit to be opened. Ohringer teaches diameter d3 of a plate 19 surrounding the slit can be varied to control the flow. As the references teach the size of the slit and aperture surrounding the slit can be varied to create desired flow conditions the Examiner maintains that it would be obvious to vary these parameters, both the length of the slit and the size of the aperture, to achieve desired flow such that the seating portion would cover a minority of the surface area of the lumen occluding portion. The Examiner acknowledges the teaching of Ohringer with regard to tearing but is not suggesting that the length of the slit should be maintained at a length less than that of the aperture. The above references teach altering both the length of the slit and the size of the aperture to achieve desired flow conditions. The Applicant has further argued that the references do not teach that the seating portion is coupled to the housing. Merriam-Webster defines coupled as to connect ("couple." Merriam-Webster Online Dictionary. 2009. Merriam-Webster Online. 23 February 2009 <http://www.merriam-webster.com/dictionary/couple>). The Examiner has taken elements 120 and 124 in the device of Moorehead to construe the flow control membrane which are connected to housing 42. This membrane, including the seating portion is effectively coupled to, connected to, the housing (Fig. 2). Two objects can be coupled together via another object..